

Defendants.

**DEFENDANTS MINEONE WYOMING DATA CENTER LLC, MINEONE
PARTNERS LLC, AND TERRA CRYPTO INC.’S OPPOSITION TO
PLAINTIFF’S MOTION TO STRIKE EXHIBITS AND WITNESS
TESTIMONY**

COME NOW Defendants MineOne Wyoming Data Center LLC (“MineOne Data”), MineOne Partners LLC, and Terra Crypto Inc. (the “MineOne Defendants”) by and through counsel, HATHAWAY & KUNZ, LLP, and LOEB & LOEB LLP, and hereby oppose Plaintiff BCB Cheyenne LLC d/b/a Bison Blockchain (“BCB”)’s motion to strike (ECF No. 243; the “Motion”).

1. BCB asks this Court to strike the MineOne Defendants’ designation of Ed Deignan and 17 of their exhibits. BCB’s extraordinary request should be denied.

2. At the outset, BCB ignores that the Court’s Order required the parties to exchange and file “*anticipated*” witness lists no later than June 19, 2024. ECF No. 217 at 3 (emphasis added). This requirement is consistent with Fed. R. Civ. P. 26: “By its express language, Rule 26(a) doesn’t require disclosure of impeachment witnesses and rebuttal witnesses traditionally need not be (and indeed, often cannot be) identified prior to trial.” *Navair, Inc. v. IFR Ams., Inc.*, No. 04-1023-MLB, 2008 U.S. Dist. LEXIS 136134, at *10-11 (D. Kan. June 12, 2008). On June 19, 2024, the MineOne Defendants did exchange a list of witnesses that it anticipated calling in accordance with the Court’s Order (although a copy of the exhibits was not filed until the following day because of the deadline fell on a federal holiday and because a medical emergency of the Managing Clerk of MineOne Defendants’ counsel). ECF No. 224.

3. Upon receiving Plaintiff’s witness list and exhibits, the MineOne Defendants determined that it may be necessary to call Mr. Deignan as *a rebuttal and/or impeachment witness*

and disclosed him to BCB as a courtesy. Contrary to BCB's contention, Mr. Diegnan is not being called to testify about "CFIUS." ECF No. 243 ¶ 12. Instead, Mr. Diegnan is being called in his capacity as a CPA to rebut BCB's allegations regarding the MineOne Defendants' loan agreements.

4. The same reasoning applies to most of the exhibits that BCB challenges, which were also disclosed as potential rebuttal exhibits after review of BCB's exhibits. To the extent that the MineOne Defendants disclosed non-rebuttal exhibits after June 19, 2024, these exhibits were inadvertently omitted from the MineOne Defendants' exhibit list due to the pressing and evolving nature of the preparation for the upcoming evidentiary hearing.

5. Finally, BCB has not and cannot articulate any prejudice that it has suffered. The MineOne Defendants were not required to designate Mr. Deignan and its rebuttal exhibits at all, and did so as a courtesy to BCB and the Court. Moreover, BCB's prejudice arguments are disingenuous at best, as it is BCB that improperly filed two additional affidavits on the eve of the evidentiary hearing that are replete with brand new factual claims and misrepresentations.¹ *See, e.g., KnowledgeAZ, Inc. v. Jim Walter Res., Inc.*, No. 1:05-cv-1019-RLY-WTL, 2008 U.S. Dist. LEXIS 48645, at *16-17 (S.D. Ind. June 25, 2008) (denying motion to strike witness and exhibit lists where, as here, movant "suffered absolutely no prejudice from [the] delayed filing.").

6. WHEREFORE, the MineOne Defendants request that this Court deny BCB's motion in the entirety.

¹ The MineOne Defendants have separately filed a motion to strike these belated and prejudicial affidavits. (ECF No. 246).

DATED this 25th day of June, 2024.

DEFENDANTS MINEONE WYOMING DATA
CENTER, LLC, MINEONE PARTNERS LLC,
AND TERRA CRYPTO INC.

By: /s/ Paula K. Colbath

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CERTIFICATE OF SERVICE

This is to certify that on the 25th day of June, 2024, a true and correct copy of the foregoing was served upon counsel as follows:

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